

No. 15,485

IN THE

United States Court of Appeals
For the Ninth Circuit

UNITED STATES OF AMERICA,
Appellant,

vs.

BARNEY A. GERTZ, Owner of 3,827 Coins
Being Likenesses of the 1847 "Hapa
Haneri" Issued by the Hawaiian
Government,
Appellee.

On Appeal from the United States District Court
for the District of Hawaii in Civil No. 1474.

APPELLANT'S REPLY BRIEF.

LOUIS B. BLISSARD,
United States Attorney,
District of Hawaii,
Honolulu, Hawaii,
Attorney for Appellant.

FILED

JUL 15 1957

PAUL P. O'BRIEN, CLERK



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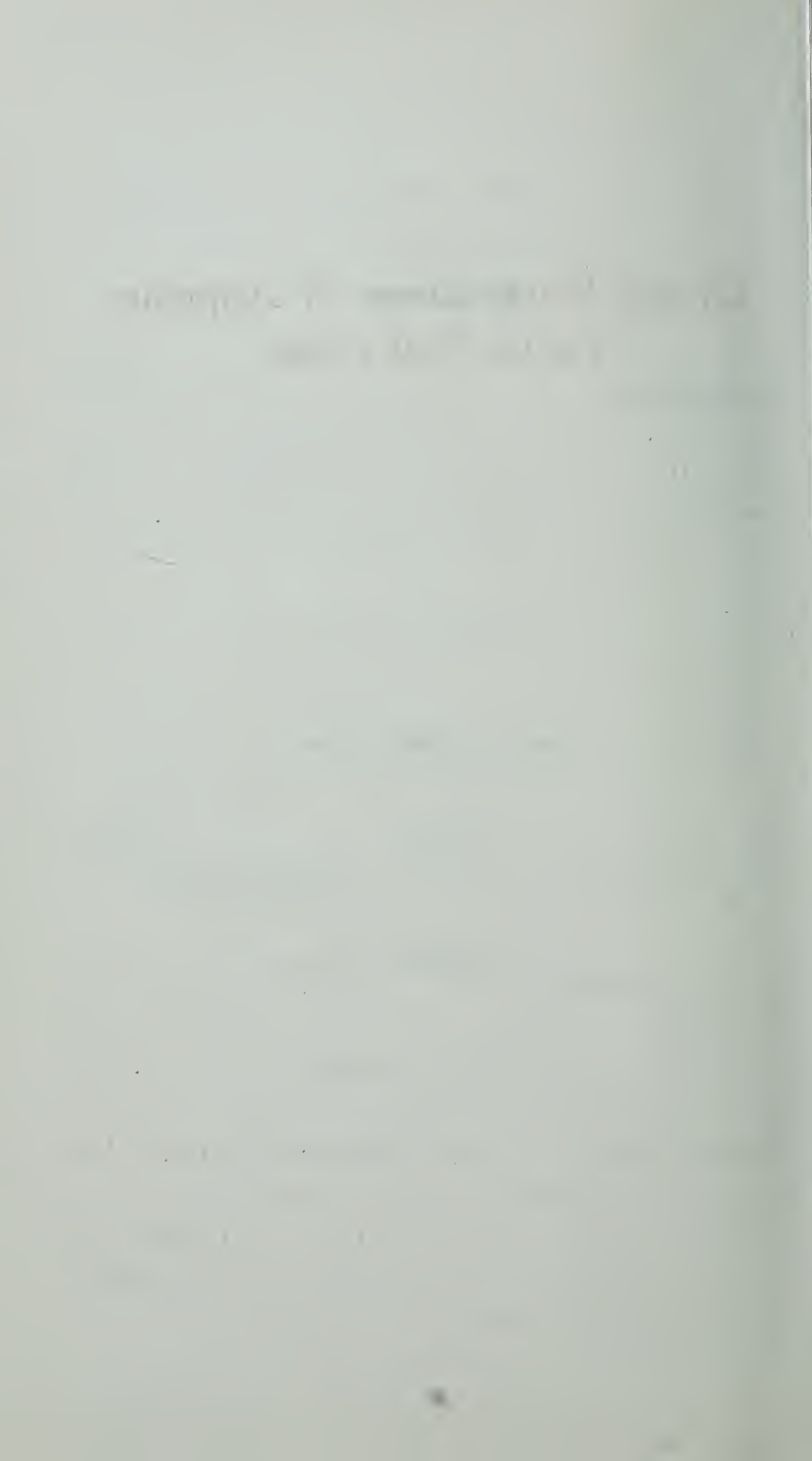
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OPENING STATEMENT.

I.

Certain portions of Appellee's Brief should be stricken as immaterial and impertinent:

1. The SPECIFICATION OF ERROR IN THE TRIAL COURT'S DECISION AND JUDGMENT, appearing on page 6;

2. Part II of his argument, appearing on pages 14-16; and

3. The summary thereof, appearing on page 6.

Cross-errors are not assignable in the Federal Court, and a party who has secured all the relief he seeks, cannot, by assigning or arguing cross-errors, confer jurisdiction on an appellate court to consider or determine alleged erroneous rulings not otherwise presented. *Midland Valley R. Co. v. Fulgham*, 8 Cir., 181 Fed. 91, 95-96. This rule seems so well established that Appellant has refrained from filing a separate motion to strike the above mentioned portions of Appellee's Brief and will not undertake to answer such portions herein.

II.

In Part I of his argument, Appellee states that under Appellant's construction of 18 U.S.C., § 489, Congress has prohibited the making or possession of disks in the likeness or similitude of the coins of ancient countries, irrespective of the time such countries ceased to exist. With the qualification that the aforementioned possession must be coupled with the requisite intent set forth in the statute, we say Appellee is absolutely right—*except that the making, importing or possession of such disks or coins may be authorized by the Secretary of the Treasury or other proper officer of the United States.*

This is not an unreasonable situation. The Secretary of the Treasury may well authorize the making of disks or coins in the likeness or similitude of the stater of ancient Carthage, the denarius of ancient Rome, or the shekel of the ancient Kingdom of Judea, but he would be less likely to authorize the making of coins in the likeness or similitude of the coins of the Kingdom of Hawaii, *when those coins are still legal tender and are redeemable in American currency.* 48 U.S.C., §§ 513-514.

Hawaiian coins are redeemable today in coin of the United States. Hawaiian silver certificates were redeemable up until January 1, 1905. 48 U.S.C., § 516 (historical note). Surely, Congress intended that these coins and certificates, issued by a non-existing former foreign government, should be protected from counterfeiting. However, if "foreign government," as used in Chapter 25 of Title 18, means what the court below said it means, then there was and is nothing in our laws prohibiting the counterfeiting of these coins and certificates. Such a result would be unthinkable—a further cogent reason to conclude that the word "include," as used in § 11 of Title 18, U.S.C., is a word of enlargement, and thus the term "foreign government," as defined in said § 11, is not a limitation upon Chapter 25 of Title 18.

CONCLUSION.

The judgment of the District Court should be reversed.

Dated, Honolulu, T.H.,
July 1, 1957.

LOUIS B. BLISSARD,
United States Attorney,
District of Hawaii,
Attorney for Appellant.